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ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	09/819,126	ERRICO, JAMES H.
	Examiner	**Art Unit**	
	Justin E. Shepard	2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>07 September 2007</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-15,25-28,50-53,57 and 59-64</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-15,25-28,50-53,57 and 59-64</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

        1.☐ Certified copies of the priority documents have been received.

        2.☐ Certified copies of the priority documents have been received in Application No. _____.

        3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 9/7/07 have been fully considered but they are not persuasive.

Page 13, paragraph starting with "All independent":

The applicant argues that Herz teaches away from the amendment made to the independent claims. Specifically the applicant feels that Herz does not disclose a system with hierarchical user preferences wherein the first level encompasses all preferences of said second level. Herz discloses (column 17, lines 44-63) a system where moods can be assigned to users, wherein said moods can be nested in a tree form or hierarchical, and where said moods can be used to select programming for the user. In column 17, lines 61-63, Herz discloses that the most specific mood would "generally" be used to develop the program list, but it does not disclose only using the most specific mood. Referring to the moods that Herz uses in his example (generic, peaceful, violent, and speculative), if one were in a speculative and peaceful mood this would have a different meaning than someone in a violent speculative mood. Therefore the programming selected in each of these examples would be different. Therefore the first level moods would need to contain the second level moods to provide accurate programming to the user.

Page 13, paragraph starting with "Furthermore":

The applicant further argues that the moods are not user preference, but instead are some kind of data with preferences that associated with the moods. If a mood contains preferences, wouldn't the moods be considered preferences themselves? Also, the applicant argues that the moods are not matched to program attributes. As the moods are used to select programming, they must be being matched to program attributes, as how would the moods be being used to select programming?

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1.   Claims 1-11, 13, 14, 25, 26, 27, 50, 51, 52, 53, 57, and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herz in view of Finseth.

Referring to claim 1, Herz discloses a method for selecting at least one of audio and video (figure 1) comprising:

(a) receiving user attribute information that includes user preferences (figure 1, part 104);

(b) receiving program information corresponding to said at least one of said audio and video, where said program information comprises attributes each corresponding to a respective one of said user preferences (figure 1, part 102; column 28, lines 6-14), where said user preferences include hierarchical levels including at least a first level

and a second level where said second level includes attributes descriptive of one or more attributes in said first level at a finer level of detail, wherein said first level includes preferences that together encompass all preferences of said second level, and wherein at least one of said user preferences is at a first level and at least two of said user preferences is at a second level (column 17, lines 52-61; column 27, lines 62-67; column 28, lines 1-5);

(c) determining the desirability of said at least one of said audio and video based upon jointly processing preferences of said program information attributes and processing preferences of said user attribute information (figure 1, part 106; column 27, lines 62-67; column 28, lines 1-14), said preferences selectively include data indicative of at least a first, a second, and a third option (column 10, lines 51-60; column 11, lines 6-12);

(i) said first option including a preference indicative of the positive desirability of said at least one of audio and video (column 10, lines 51-60; column 11, lines 6-12);

(ii) said second option including a preference indicative of non-desirability of said at least one of audio and video (column 10, lines 51-60; column 11, lines 6-12);

(iii) said third option including a preference indicative of indifference desirability, being neither said positive or non-desirability, of said at least one of audio and video (column 10, lines 51-60; column 11, lines 6-12);

(d) wherein said desirability is increased based upon said first option, said desirability is decreased based upon said second option, and said desirability remains the same based upon said third option (column 14, lines 20-33).

Herz does not disclose a method where said program information attributes each include hierarchical levels including at least a first level and a second level where said second level includes attributes descriptive of one or more attributes in said first level at a finer level of detail, wherein said first level includes preferences that together encompass all preferences of said second level, and wherein at least one of said program information attributes is at a first level and at least two of said program information attributes is at a second level; and wherein determining the desirability of said at least one of said audio and video based upon jointly processing preferences of at least said first level and said second level of said hierarchical levels of said program information attributes and processing preferences of at least said first level and said second level of said hierarchical levels of said user attribute information.

In an analogous art, Finseth teaches a method where said program information attributes each include hierarchical levels including at least a first level and a second level where said second level includes attributes descriptive of one or more attributes in said first level at a finer level of detail, wherein said first level includes preferences that together encompass all preferences of said second level, and wherein at least one of said program information attributes is at a first level and at least two of said program information attributes is at a second level (column 12, lines 47-48 and 53-57; figure 4, parts 98A); and wherein determining the desirability of said at least one of said audio and video based upon jointly processing preferences of at least said first level and said second level of said hierarchical levels of said program information attributes and processing preferences of at least said first level and said second level of said

hierarchical levels of said user attribute information (Note: as the hierarchical program

attributes found in figure 4 of Finseth are found in the inputs to the agreement matrix

calculation in Herz (column 28, lines 6-14) it is interpreted as these hierarchical

attributes being jointly processed).

At the time of the invention it would have been obvious for one of ordinary skill in

the art to use the hierarchical program attribute information taught by Finseth in the

method disclosed by Herz. The motivation would have been to provide a more intuitive

method of filtering the display of programs when provided in the EPG.

Claims 10, 50, 57, and 60 are rejected on the same grounds as claim 1.

Regarding claim **2**, Herz teaches wherein said first option is a non-binary

preference value (column 10, lines 51-60).

Regarding claim **3**, Herz teaches wherein said second option is a non-binary

preference value (column 10, lines 51-60).

Referring to claim 4, Herz teaches wherein said first option is positive preference

value (column 10, lines 51-60).

Referring to claim 5, Herz teaches wherein said second option is a negative

preference value (column 11, lines 6-12).

Regarding claim **6,** Herz teaches wherein said preferences are adjustable by a user (column 14, lines 20-33).

Regarding claim **7**, Herz teaches wherein said preferences include at least one default value (column 11, lines 56-60).

Regarding claim **8**, Herz teaches wherein said preferences are adjustable by a user (column 14, lines 20-33).

Regarding claim **9**, Herz teaches wherein said determining results in a value (column 10, lines 51-60).

Regarding claim **11**, Herz teaches wherein said determining the desirability includes: (a) calculating a first ranking value for said first program attribute information; (b) calculating a second ranking value for said second program attribute information; and (c) determining said relative ranking based upon said first ranking value and said second ranking value (column 14, lines 20-33).

Regarding claim **13,** Herz teaches wherein said determining the desirability includes and operation where, (a) said first program attribute information includes a first attribute and free from a second attribute; (b) said second program attribute information includes said first attribute and said second attribute; and (c) said determining said

relative ranking indicates said second program as more desirable than said first

program (column 14, lines 20-33).

Claim 25 is rejected on the same grounds as claims 1 and 13.

Regarding claim **14,** Graves teaches wherein said determining the desirability

includes and operation where, (a) said first program attribute information includes a first

attribute and free from a second attribute; (b) said second program attribute information

includes said first attribute and a relatively smaller presence of said second attribute in

comparison to said first attribute; and (c) said determining said relative ranking indicates

said second program as more desirable than said first program (column 14, lines 20-

33).

Regarding claim **26,** Herz teaches wherein said evaluating is free from combining

multiple preference values into a single composite preference value (column 10, lines

51-60).

Regarding claim **27,** Herz teaches wherein a said composite score is determined

for a plurality of said videos, and said video are ranked based, at least in part, upon said

composite scores. (column 14, lines 20-33).

Regarding claim **51,** Herz teaches wherein said ranking determines said first

video as more desirable for said user than said second video (column 10, lines 51-60).

Regarding claim **52,** Herz teaches wherein said ranking determines said second video as more desirable for another user than said first video (column 10, lines 51-60).

Regarding claim **53,** Herz teaches wherein said ranking is in a relativistic manner (column 10, lines 51-60).

2.   Claims 15, 28, 59, and 61-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herz in view of Finseth as applied to claim 10 above, and further in view of Graves.

Referring to claim 15, Herz and Finseth do not disclose a method wherein said determining the desirability includes and operation where, (a) said first program attribute information includes a first attribute and a second attribute, where said second attribute has a first relatively smaller presence than said first attribute in said first program; (b) said second program attribute information includes said first attribute and said second attribute, where said second attribute has a second relatively smaller presence than said first attribute in said second program, where said first relatively smaller presence is smaller than said second relatively smaller presence; and (c) said determining said relative ranking indicates said second program as more desirable than said first program.

In an analogous art, Graves teaches a wherein said determining the desirability includes and operation where, (a) said first program attribute information includes a first

attribute and a second attribute, where said second attribute has a first relatively smaller

presence than said first attribute in said first program (See Fig. 3, Fig. 5 A program

could have a smaller value for one attribute versus another i.e. Actor #1 has a smaller

value (weight) than Story appeal); (b) said second program attribute information

includes said first attribute and said second attribute, where said second attribute has a

second relatively smaller presence than said first attribute in said second program,

where said first relatively smaller presence is smaller than said second relatively smaller

presence (See Fig. 3, Fig. 5 A program could have a smaller value for one attribute

versus another i.e. Actor #1 has a smaller value(weight) than Story appeal and a

program could have a smaller value for an attribute when compared to that value for

that attribute of another program); and (c) said determining said relative ranking

indicates said second program as more desirable than said first program (See Col. 6

lines 17-52 Col. 8 Eqn. 1 Based on the weighting and values of each attribute a second

program could receive a higher ranking than a first program).

At the time of the invention it would have been obvious for one of ordinary skill in

the art to add the preference modification taught by Graves to the method disclosed by

Herz and Finseth. The motivation would have been to enable the preferences to be

more accurate, thereby making the system more enticing to possible customers.

Regarding claim **28,** Herz and Finseth do not disclose a method wherein said

composite score is determined free from comparing said first score and said second

score.

In an analogous art, Graves teaches wherein said composite score is determined free from comparing said first score and said second score (See Col. 8 Eqn 1 The composite score is the sum of the first score and the second score. Summing is free from comparison).

At the time of the invention it would have been obvious for one of ordinary skill in the art to add the preference modification taught by Graves to the method disclosed by Herz and Finseth. The motivation would have been to enable the preferences to be more accurate, thereby making the system more enticing to possible customers.

Regarding claim **59,** Herz and Finseth do not disclose a method wherein said evaluating is based upon a summation operation.

In an analogous art, Graves teaches wherein said evaluating is based upon a summation operation (See Col. 8 Eqn. 1). From the specification the AND function is an averaging function (Page 131 lines 13-14), the result of Graves summation divided by the number of elements summed (n).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Herz with the teachings of Graves so that the result of his summation equation was divided by the number of elements added together to create normalized grades.

Regarding claim **61,** Herz and Finseth do not disclose a method wherein at least one of said first operator and said second operator is an "OR" function.

In an analogous art, Graves teaches wherein at least one of said first operator and said second operator is an "OR" function (See Col. 8 Eqn. 1). From the specification the "OR" function is a summation (Page 135 line 1).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Herz with the teachings of Graves so that the result of his summation equation was divided by the number of elements added together to create normalized grades.

Regarding claim **62**, Herz and Finseth do not disclose a method wherein said first operator and said second operator are "OR" functions.

In an analogous art, Graves teaches wherein said first operator and said second operator are "OR" functions (See Col. 8 Eqn. 1).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Herz with the teachings of Graves so that the result of his summation equation was divided by the number of elements added together to create normalized grades.

Regarding claim **63**, Herz and Finseth do not disclose a method wherein said first set and said second set depend from the same preference within said hierarchy.

In an analogous art, Graves teaches wherein said first set and said second set depend from the same preference within said hierarchy (See Col. 8 Eqn. 1The first set

and second set are on the same level of the hierarchy and depend from the overall

preference).

Therefore, it would have been obvious to one of ordinary skill in the art at the

time the invention was made to modify Herz with the teachings of Graves so that the

result of his summation equation was divided by the number of elements added

together to create normalized grades.

Regarding claim **64,** Herz and Finseth do not disclose a method wherein said first

set and said second set have a different number of preferences.

In an analogous art, Graves teaches wherein said first set and said second set

have a different number of preferences (See Col. 8 Eqn. 1 i values 1 to n could be an

odd number divided into two sets).

Therefore, it would have been obvious to one of ordinary skill in the art at the

time the invention was made to modify Herz with the teachings of Graves so that the

result of his summation equation was divided by the number of elements added

together to create normalized grades.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not
mailed until after the end of the THREE-MONTH shortened statutory period, then the
shortened statutory period will expire on the date the advisory action is mailed, and any
extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of
the advisory action. In no event, however, will the statutory period for reply expire later
than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the
examiner should be directed to Justin E. Shepard whose telephone number is (571)
272-5967. The examiner can normally be reached on 7:30-5 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's
supervisor, Chris Kelley can be reached on (571) 272-7331. The fax phone number for
the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the
Patent Application Information Retrieval (PAIR) system. Status information for
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